

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 SUE A. MARTIN,

5 Plaintiff,

6 v.

7 CAROLYN W. COLVIN,

8 Defendant.

Case No. 2:13-cv-01388-APG-CWH

**ORDER (1) GRANTING MOTION TO
RECONSIDER AND REMANDING TO
THE ALJ; (2) DENYING WITHOUT
PREJUDICE MOTION FOR
ATTORNEY'S FEES; AND (3)
DENYING AS MOOT MOTIONS TO
STRIKE AND STAY**

(ECF Nos. 31, 34, 36, 37)

9
10
11 Plaintiff Sue Martin filed suit seeking judicial review of the Social Security
12 Administration's ("SSA") denial of her application for benefits. Martin moved to remand to the
13 administrative law judge ("ALJ") to determine the proper disability onset date. ECF No. 16-1.
14 The Magistrate Judge recommended that instead of remanding to the ALJ, I set the disability
15 onset date as September 27, 2011 because Martin proposed that date, so there was no ambiguity
16 that necessitated a remand. ECF No. 27 at 8. I accepted the Magistrate Judge's recommendation.
17 ECF No. 30.

18 Martin now requests I reconsider that ruling, arguing that the SSA agreed that a remand to
19 the ALJ to determine the onset date was appropriate. Martin also moves for attorney's fees under
20 the Equal Access to Justice Act, although she concedes that motion may be premature.

21 The SSA opposes Martin's reconsideration request, arguing that she has not identified on
22 what basis the prior order should be altered or amended. The SSA also moves to stay the remand
23 to the ALJ pending my ruling on Martin's reconsideration motion. Finally, the SSA moves to
24 strike Martin's motion for attorney's fees as premature.

25 I grant Martin's reconsideration motion. *See Zimmerman v. City of Oakland*, 255 F.3d
26 734, 740 (9th Cir. 2001); LR 59-1. The conclusion that Martin proposed September 27, 2011 as
27 the unambiguous onset date was clearly erroneous. Martin's motion to remand did not propose
28

1 any onset date. ECF No. 16. In her reply, Martin argued that even if the SSA's position was
2 accepted, then "at a minimum" the disability onset date should be September 27, 2011. ECF No.
3 26 at 1. However, Martin did not propose that as the onset date. Rather, she argued that the onset
4 date must be earlier because "the very fact that a cervical MRI had been ordered for September
5 2011 confirms that Ms. Martin had been complaining of such serious physical symptoms that
6 further study was warranted." *Id.* at 4. She also stated that it was important that her disability
7 onset date be before March 30, 2011, because that is the date she was last insured for Title II
8 disability insurance benefits. *Id.* at 2 n.2; *see also* ECF No. 16-1 at 5.

9 The SSA agreed that remand to the ALJ for a determination of the disability onset date
10 was appropriate. ECF No. 29 at 2 ("The Commissioner agrees that the case should be remanded
11 for further proceedings so that the ALJ may consider the import of the September 27, 2011 MRI. .
12 . ."); *id.* at 5 ("[T]he Commissioner requests the Court remand this case for further proceedings so
13 that the ALJ may consider the impact of the September 27, 2011 MRI on Plaintiff's alleged
14 disability onset date and deny Plaintiff's request to order the agency to seek testimony of a
15 medical expert."). Additionally, the SSA recognized that Martin was seeking an onset date prior
16 to March 30, 2011. *Id.* at 3.

17 Consequently, it was clear error to conclude that Martin proposed an unambiguous
18 disability onset date of September 27, 2011. I therefore grant Martin's motion to reconsider and
19 remand to the ALJ to consider the impact of the September 27, 2011 MRI on her disability onset
20 date.¹

21 I deny as premature Martin's motion for attorney's fees under the Equal Access to Justice
22 Act, without prejudice to renew. *See* 28 U.S.C. § 2412 (d)(1)(B) (stating that the party seeking
23 fees must file the fee application within thirty days of "final judgment in the action"); *id.*
24 § 2412(d)(2)(G) (defining "final judgment" to mean "a judgment that is final and not appealable,
25 and includes an order of settlement"). I deny the SSA's motions to strike and to stay as moot.

26
27 ¹ In her motion to reconsider, Martin states she "will no longer pursue before this Court an
28 argument that medical expert testimony must be received upon remand to the ALJ." ECF No. 31 at 2. I
therefore express no opinion on this issue.

1 IT IS THEREFORE ORDERED that plaintiff Sue Martin's motion to reconsider (**ECF**
2 **No. 31**) is **GRANTED**. This case is **REMANDED** to the ALJ to consider the impact of the
3 September 27, 2011 MRI on Martin's disability onset date.

4 IT IS FURTHER ORDERED that plaintiff Sue Martin's motion for attorney's fees (**ECF**
5 **No. 34**) is **DENIED** without prejudice to renew.

6 IT IS FURTHER ORDERED that defendant Carolyn Colvin's motions to strike (**ECF No.**
7 **36**) and to stay (**ECF No. 37**) are **DENIED** as moot.

8 DATED this 27th day of June, 2016.

9
10 
11 _____
12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28